

Chapter IX

Complaint and Referral Policies and Procedures

Kentucky Complaint Procedures effective October 1st, 2001 replacing OSHA Instruction CPL 2.115 June 14, 1996 Directorate of Compliance Programs and FOM Chapter IX

I. Purpose. This instruction establishes revised policies and procedures for handling complaints relating to workplace safety and health conditions.

II. Scope. This instruction applies to KY-OSH Compliance Activity

III. References. (Reserved)

IV. Action. Program Managers and Supervisors shall ensure that the guidelines and procedures set forth in this instruction are followed.

V. Summary of Changes. Significant features of the new policy are:

A. Complaints are no longer identified as "formal" or "nonformal."

B. Based on new criteria, complaints shall now be classified as those that result in onsite inspections and those that result in investigations using letters to the employer.

VI. Application. This instruction applies to complaints received addressing hazards in all covered workplaces, including private and public sector.

VII. Background.

This new policy continues to assure the right of current employees and their representatives to an onsite inspection; in addition employees who either do not have legal standing to request an inspection from a complaint or send in an anonymous complaint will receive an investigation from the Labor Cabinet.

VIII. State Program Change. This is a State Program Change that impacts previous complaint procedures as outlined in adopted CPL 2.115, and the Kentucky FOM Chapter IX.

IX. Agency Response The agency's response to a complaint will take a variety of forms, ranging from an inspection to a response by letter, depending upon the formality of the complaint, the nature of the hazard and the abatement response of the employer.

Chapter IX.
Complaints and Referrals

A Complaint
A. Inspection Complaint

Formal Request for inspection under KRS 338.121

"(1) Any employee, or representative of employees, who believes that a violation of an occupational safety and health standard exists that threatens physical harm, or that an imminent danger exists, **may request an inspection** by giving notice to the commissioner of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy."

An inspection complaint results in an inspection which is conducted by a KY-OSH compliance officer at the employer's worksite, and the complaint was reduced to writing, is signed by a current employee or employee representative, and states the reason for the inspection request with reasonable particularity. In addition, there is at least one of the following:

1. There are reasonable grounds to believe that a violation of a safety or health standard or danger exists or has recently existed, as provided in 803 KAR 2:090 Section 1(1).
2. The complaint alleges that physical harm, such as disabling injuries or illnesses (as defined in I.3. above) has occurred as a result of the complained-of hazard(s) and there is reason to believe that the hazard or related hazards still exist.
3. The complaint identifies an establishment or an alleged hazard covered by a local or national emphasis program.
4. The firm or establishment that is the subject of the complaint has a history of egregious, willful, or failure-to-abate citations, within the last five (5) years. The Director may determine not to inspect a facility when good quality abatement evidence has been provided and programs have been implemented to prevent a recurrence of hazards.
5. If an inspection is scheduled, or has begun, at an establishment, and a complaint that would normally be investigated by letter is received, that complaint may, at the Program Managers discretion, be scheduled for inspection as a companion complaint.

B. Imminent Danger Complaints - Any complaint (oral or written) which, in the professional opinion of the Program Manager, constitutes an imminent danger, as defined in Chapter VII, shall be inspected irrespective of whether or not it meets the formality requirements KRS Chapter 338.121(1). It shall be inspected the same day received, where possible, but not later than the employer's next working day after receipt of the complaint.

C. Investigation Complaints: An investigation complaint is for other valid complaints that do not typically meet the complaint inspection criteria described under **inspection complaint**. An "investigation" differs from an "inspection" in that in an investigation, KY-OSH advises the employer of the alleged hazards by letter. The employer is required to provide a written response. However, in the following cases a program manager **may** decide it is necessary to schedule an on-site complaint inspection:

1. The complaint identifies an establishment or an alleged hazard covered by a local or national emphasis program.
2. The employer fails to provide an adequate response to a complaint investigation as described in Section L, below.
3. The firm or establishment that is the subject of the complaint has a history of egregious, willful, or failure-to-abate citations, within the last five (5) years. The Director may determine not to inspect a facility when good quality abatement evidence has been provided and programs have been implemented to prevent a recurrence of hazards.
4. If an inspection is scheduled, or has begun, at an establishment, and a complaint that would normally be investigated by letter is received, that complaint may, at the Program Managers discretion, be scheduled for inspection as a companion complaint.

D. Valid Complaints - To constitute a valid inspection or investigation complaint the notice must allege that a hazard exists in the workplace or that the law (meaning a standard or regulation) is or has recently been violated.

1. If the notice is so vague and unsubstantiated that the Program Manager is unable to make a reasonable judgement as to the existence of the alleged workplace hazard, there is no valid complaint. In such a case, however, every reasonable attempt shall be made to contact the person giving the notice to obtain more specific information.

2. If, as a result of a recent inspection or, on the basis of other objective evidence, the Program Manager determines that the hazard which is the subject of the notice is not present, e.g., it has already been corrected, such a notice is not a valid complaint.

3. The workplace must be one wherein the KY-OSH Programs jurisdiction has not been preempted under KRS Chapter 338.021. Thus, if the notice involves conditions inside a mine, any hazard or violation clearly falls within an area wherein the KY-OSH Program's jurisdiction has been preempted. In such a circumstance the notice is not a valid complaint. Such notices shall be promptly transferred to the appropriate agency for its action.

E. Discrimination Complaints - The complainant shall be advised of the protection against discrimination afforded by KRS Chapter 338.121 (3) and shall be informed of the procedure for filing a discrimination complaint.

- a) Safety and Health complaints filed by former employees who allege that they were fired for exercising their rights under the Law are not valid complaints and will not be handled as an investigation complaint or an inspection complaint. The complaint will be transferred to the appropriate discrimination personnel for investigation of the alleged discrimination complaint.

F. Employee - For purposes of submitting an inspection complaint, an employee is either of the following:

- a) A present employee of the employer about whose establishment the complaint is being made.
- b) A present employee of another employer if that employee is working at or near some other employer's workplace and is exposed to hazards of that workplace.

G. Representative of employees - For purposes of submitting a complaint, a representative of employees is any of the following:

- a) An authorized representative of the employee bargaining unit, such as a certified or recognized labor organization;
- b) An attorney acting for a current employee of the facility
- c) Any other person acting in a bona fide representative

capacity; e.g., a member of the employee's family or an elected official. In this situation, a representative of an employee shall be presumed to be so acting unless the CSHO obtains information that the complaint was not submitted with the knowledge of or on the behalf of the current employee of the facility.

H. Permanently disabling injuries or illnesses Injuries or illnesses which may result in permanent disabilities or illnesses that are chronic or irreversible. Examples of permanently disabling injuries or illnesses include: amputation, blindness, standard threshold shift in hearing, lead or mercury poisoning, or third-degree burns.

I. Complaint Inspection Scope: A complaint inspection is an inspection that is initiated primarily as a result of a complaint but is not limited to matters referred to in the complaint.

803 KAR Section 1(2) "If upon receipt of such notification the commissioner determines that the complaint meets the requirements set forth in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. **Inspections under this section shall not be limited to matters referred to in the complaint.**" (Emphasis added)

J. Procedures for Receiving a Complaint by Telephone

1. During the course of telephone contact with the potential complainant, the following general guidance shall be followed. The person taking the complaint must, to the extent feasible:

- a. determine if the complainant is a current employee or an employee representative of a current employee;
- b. explain the complaint process, and if appropriate, the concepts of "investigation complaint" and "inspection complaint", as well as the relative advantages of each; explain to the caller of their right to file a complaint in writing if they wish for an inspection and what requirements must be met for an inspection complaint to be initiated.
- c. determine the exact nature of the alleged hazard and the basis of the complainant's knowledge;
- d. determine if complaint items are apparent violations of KY- OSH standards or the KY-OSH Act;
- e. inform the complainant(s) of their rights to confidentiality in accordance with **803 KAR 2:090 Section 1(1)**, "... upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Department of Workplace Standards.";

- f. explain to complainant(s) discrimination protection provided by KRS 338.121(3)(a): "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter."

K. Procedures for an Inspection Complaint

1. The Program Manager shall evaluate each complaint, and other available information, and exercise professional judgement to decide whether or not there are reasonable grounds to believe that a violation or hazard exists. If there are not reasonable grounds to believe that a violation or hazard exists, an inspection shall not be conducted. The Program Manager may also determine not to inspect a facility if she/he has evidence that the condition complained of is being abated.

2. If the complaint meets the inspection criteria listed in I.1. above, the complainant or employee representative shall be contacted or at least a reasonable attempt made by the CSHO conducting the inspection. All attempts to contact the complainant shall be documented under comments on the CSHO copy of page 2 of the typed complaint form. Every reasonable attempt shall be made to interview the complainant concerning conditions alleged on the complaint and advise the complainant of inspection procedures and results. After an inspection, the Program Manager shall send the complainant a letter describing the results of the inspection, with any citation(s) attached.

3. When a written complaint signed by a current employee or employee representative is received, and there are reasonable grounds to believe that a violation or hazard exists, an inspection shall be conducted. The complainant may be contacted for clarification of issues raised in the complaint, as necessary. Where a written, signed complaint has been submitted, but, in the professional judgement of the Program Manager, there are no reasonable grounds to believe that a violation or danger exists, no inspection or investigation shall be made. In such situations, the complainant shall be notified in writing of KY-OSH's intent to not conduct an investigation or inspection, the reasoning behind such a determination, and the appeal rights provided under 803 KAR 2:090.

L. Procedures for an Investigation Complaint

1. If the complaint requires an investigation, KY-OSH shall contact the employer by letter to notify him/her of the complaint and its allegation(s). The employer shall be advised that he/she must investigate and determine whether the complaint is valid. The employer shall be advised that a response is due within ten(10) working days and that KY-OSH requests the posting/sharing of information with employees, employee representative and/or the safety committee. Although the employer must respond within the above time frame, he/she may not be able to complete abatement action, but is encouraged to do so. See the letter to employers at Appendix C, pages 1-2 for what is required in their response.

2. If a signed complaint is received after the complaint investigation process has begun, KY-OSH shall make a determination as to whether the alleged hazard is still likely to exist based on the employer's response or by contacting the complainant. If the alleged hazard is deemed likely to still exist then an inspection may be scheduled without further delay. If the conditions appear to no longer exist then the complainant shall be informed that a complaint investigation has already begun and he/she still retains the right to request an on-site inspection if he/she disputes the results and believes the hazard still exists.

3. When KY-OSH receives an adequate response from the employer, an on-site inspection normally will not be conducted.

4. If no employer or an inadequate employer response is received after the allotted ten (10) working days, an additional contact with the employer may be made before an inspection is scheduled. Ultimately, if the employer provides no response or an inadequate response or KY-OSH determines from other information that the condition is not being corrected, an inspection will be scheduled.

5. The complaint shall be closed when KY-OSH is satisfied that the hazard has been eliminated/abated or that KY-OSH does not have statutory authority over the specific employer activity.

M. Identity of Complainant. The identity of the complainant shall be withheld from the employer, upon the request of the complainant, in accordance with 803 KAR 2:090. No information shall be given to employers which would allow them to identify the complainant.

N. Priorities for Responding to Inspection Complaints - Inspection complaints shall be conducted according to the following priority:

1. Inspection Complaints, other than imminent danger, shall be given the classification and gravity of the alleged hazards as defined in Chapters IV and VI.
2. Serious Inspection complaints shall be investigated on a priority basis within 30 days and Other than serious inspection complaints within 120 days.

O. Inspection complaint procedures - In general, the procedures in Chapter III shall be followed in conducting complaint inspections. Particular attention, however, is directed to the following special requirements for complaint inspections:

1. Copy of the complaint - A copy of the complaint shall be given to the employer at the opening conference.

A. In the case of a multi-employer work site, such as a construction site, a copy of every complaint, including those against subcontractors, shall be provided to the general contractor as well as to the employer against whom the complaint has been filed.

B. A copy of every complaint against the general contractor or against one or more of the subcontractors shall be provided, if possible, to each subcontractor whose employees may be exposed to the alleged hazard.

2. Walkaround Rights - In a complaint inspection the walkaround rights of an employer and an employee representative shall be applicable in accordance with Chapter III. The employee representative will be chosen according to the procedures in Chapter III and, thus, the complainant will not necessarily be the employee representative for walkaround purposes.

3. Results of inspection to Complainant - After the completion of an inspection based on a complaint, the complainant shall be informed by letter of the results from the inspection (see Appendix A for form letter).

P. Sample letters for new complaint procedures. Appendix A contains samples of notification letters to the employer and complainant, a certification of posting letter, and a complaint

form letter to an employer closing the complaint.

Q. Recording in IMIS. Information about complaint inspections or investigations shall be recorded in IMIS following current instructions given in the IMIS manual. Refer to Appendix B of this instruction for additional guidance.

XI. Referrals Notice of an alleged hazard or violation of the Act given by any source not listed in Section X. above, including CSHO referrals or a discrimination officer seeking resolution of a discrimination complaint.

1. General. As a rule, referrals will be handled in a manner similar to that of complaints.

2. Definitions. For purposes of this chapter, a referral is normally distinguished from a complaint by the source providing information on the alleged hazard.

a. Notices of hazards or alleged violations originated by the sources listed in b. of this section shall be considered as referrals except as noted in b.(3). All other notices of hazards shall be considered as complaints, including employee complaints transmitted to the agency by Federal OSHA. Inspection complaints and Investigation complaints received by other government agencies and simply forwarded to the KY-OSH Program for action are complaints since they do not originate with the agency or its employees. (See B.2.b.(4).)

b. Referrals may originate from the following sources:

(1) CSHO Referrals. Serious hazards shall normally be investigated by the CSHO who observes them (after consultation with the supervisor if required) unless special expertise may be needed to assess the hazard. This special expertise may be obtained through the referral process resulting in a separate inspection, allowing the original inspection to issue any alleged violations identified (example - Process Safety Management hazards).

(a) Types of Referrals. There are two types CSHO referrals.

- 1 Safety (Health to Safety or Safety to Safety).
- 2 Health (Safety to Health or Health to Health).

- (b) Subject of CSHO Referrals. Generally, CSHO referrals shall be limited to potentially serious hazards observed or communicated to the CSHO during an inspection or visible from or in public areas, such as streets, highways or the public areas of business premises. Such observed hazards shall be documented adequately for review by the supervisor.
- (c) Circumstances. There are circumstances when a CSHO referral may be necessary or appropriate, such as the following:
 - 1 The CSHO lacks the necessary expertise.
 - 2 The CSHO observing the hazard is already assigned to an inspection of higher priority.
 - 3 The CSHO observes specific evidence of imminent danger or serious hazards at a worksite not programmed for an inspection.
 - 4 Equipment necessary for an inspection is not available at the time.
 - 5 Efficient utilization of KY-OSH Program resources requires that a referral be made; e.g., the size of the workplace, the number of employees involved, the length of time likely to be required for an inspection, the extent of hazards observed, etc.
 - 6 The observations occur outside the CSHO's normal working hours

NOTE: For inspection classification purposes, if a CSHO lacks the expertise to handle all complaint items or to complete an imminent danger or fatality/catastrophe investigation or for some other reason requires assistance from another CSHO, such assistance may be counted as part

of the original complaint, imminent danger or fatality/catastrophe and not as a referral. Such assistance may be counted as a separate inspection when deemed appropriate by the Supervisor and Program Manager.

- (2) Reinspection Referrals. When a serious is withdrawn because of incomplete or erroneous inspection information, administrative error which cannot be corrected through an amendment to the citation or some other legitimate reason, the Program Manager, after consulting with the Director, shall handle the reinspection of such cases as CSHO referrals whenever there is reason to believe that the violative conditions continue to exist. (Chapter II, F.1.c.(2)(e)) If a reinspection is not to be conducted, the reasons shall be documented in the case file.

- (3) Safety and Health Agency Referrals. This category includes referrals from NIOSH, Federal OSHA, consultation programs and discrimination investigators. Referrals from State or local Health Departments, medical doctors and safety and/or health professionals from other Federal Agencies are also included in this category when they involve potentially serious employee exposures directly within the professional expertise of the person making the referral.

NOTE: For purposes of assigning an inspection priority, referrals from these sources will be considered as equivalent to CSHO referrals, although not counted as such by IMIS.

- (4) Discrimination Investigation Complaint Referrals.

The Director may decide recommend certain safety and/or health complaints from former employees (discrimination complaints which also allege hazardous working conditions or violations of OSHA regulations) to the Program Manager for inspection.

- (a) If originally received in the Office

and referred to the discrimination personnel for handling of the discrimination complaint as outlined in Chapter X, C.1, such a complaint will already have been recorded on an KY-OSH-7 Form and classified as an Investigation complaint if it also included a notice which meets the definition of "complaint."

- (b) If the complaint was filed originally with discrimination personnel, it shall be recorded on an KY-OSH-7 Form and classified as an investigation complaint.
 - (c) When an investigation complaint is received from the Discrimination Supervisory Investigator with a recommendation for inspection, it shall be scheduled for inspection and assigned a priority in accordance with this chapter.
- (5) Other Government Agency Referrals. Notifications of hazards observed and reported (referred) to KY-OSH Program by other Federal, State or local government agencies or their employees; e.g., Federal Grain Inspection Service, Nuclear Regulatory Commission, local building inspectors, fire marshals, etc., are included in this category.
- (a) Such notifications are referrals when non-government employees are exposed to the alleged hazards. (See, however, B.2.b.(3).)
 - (b) Reports by Federal employees, their supervisors, or their representatives of unsafe or unhealthful working conditions within their own workplaces and to which they are exposed (as provided for in Executive Order 12196) shall, of course, continue to be handled as complaints in accordance with Federal Area Office.
- (6) Media Reports. Reports of accidents involving serious injury or of potentially serious workplace hazards in the media shall be considered as referrals.

"Reports" shall be understood to include news items reported in the media as well as hazards reported directly to KY-OSH Program by media sources. Thus newspaper or magazine articles, photographs or news items reported over radio or television are examples of media reports as well as calls to the Office by reporters.

(7) Employer Reports. Employer reports of accidents, other than fatalities and catastrophes, or incidents, whether required by standard or regulation or not, shall be considered as referrals.

c. Referral inspections are unprogrammed inspections and, except for complaints received from 11(c) personnel, shall be recorded using the KY-OSH-90 Form.

3. Procedures. Each referral shall be evaluated as thoroughly as possible in accordance with the guidelines for evaluating complaints, to determine whether there are reasonable grounds to believe that a safety or health hazard exists. If so, the hazard shall be classified as imminent danger, serious or other-than-serious. Referrals to be inspected shall be assigned a priority by the Program Manager according to the severity of the alleged hazard.

a. When the CSHO observes an imminent danger situation under the circumstances outlined in B.2.b.(1)(c)3, the supervisor shall be contacted immediately, if practicable. Otherwise, an inspection shall be conducted without delay and the supervisor informed as soon as possible after the inspection has been initiated.

b. If, after evaluation, the Program Manager determines that a CSHO referral or a referral from a safety and health agency should be classified as other-than-serious, such a referral shall be handled by letter.

c. Other government agency referrals shall normally be handled by letter according to the instructions for Investigation Complaints.

d. For all referrals handled by letter, the following procedures apply:

(1) A letter shall be sent to the employer whenever a name and address is given in the referral or is obtainable with reasonable effort. Letters similar to those used for

complaints shall be used for referrals also if the most appropriate one is revised in accordance with the particular circumstances of the referral.

- (2) If no employer name or address is obtainable, the referring party shall be notified by telephone of this fact and shall be informed that OSHA can take no action without being supplied with such information.
 - (3) When a letter is sent to the employer, the Investigation Complaint Procedures are applicable.
- e. The Program Manager may decide that a government agency referral identifies a hazard of such a potentially serious nature that it warrants an inspection. Such referrals shall be placed in the same inspection priority as media reports.
- f. In the case of media reports, reasonable efforts to corroborate the information contained in the report shall be made whenever necessary. Specifically, the supervisor shall attempt, before scheduling an inspection, to determine if the incident is related to an apparent violation of a standard. This may be done by carefully reviewing the facts as reported by the media or, when indicated by the particular circumstances, by contacting a third party such as the police, the ambulance service or, in rare cases, by calling the employer.
- g. Media reports of other-than-serious hazards will not normally require an agency response.
- h. Reserved
- i. Employer reports of incidents involving chemical spills or other releases to which employees may have been potentially exposed shall normally be scheduled for an inspection within 5 days if the potential exposure is determined to have been sufficiently serious to warrant an inspection. Otherwise such incidents may be handled by letter.
- j. Except for discrimination referrals as noted in B.2.b.(3), referrals will not normally result in an inspection unless they involve potentially

- serious hazards. Consequently, referrals scheduled for inspection shall be inspected as soon as resources allow.
- k. Although no letter of acknowledgment of receipt will be necessary, a letter transmitting the results shall be sent to any referring safety and health agency or other government agency whenever a referral inspection is conducted.
 - l. The scope of referral inspections shall include a complete investigation of the circumstances of the referral. These investigations may be expanded at the discretion of the Program Manager when any of the conditions described in Chapter II, F.1.b. exist, but see Chapter III.D.1.d. (5) (b) .m.
 - m. A case file shall be set up for each referral as it is received. This case file shall contain a copy of the completed OSHA-90 Form, all documentation supporting the evaluation and classification of the referral and subsequent action documents. If an inspection is eventually performed, all of the material will be absorbed into the inspection case file.

APPENDIX A

Complaint Form Letters

1st EMPLOYER Investigation Complaint LETTER

<Date>

<Employer's Name and Address>

Re: Complaint No <Complaint #>.

Dear :

On <DATE> the Kentucky Occupational Safety and Health Program (KY-OSH) received notice of safety and health hazards at your worksite. The specific nature of the alleged hazards is as follows:

< Description of hazards made by complainant>

We have not determined whether the hazards, as alleged, exist at your workplace; and we do not intend to conduct an inspection at this time. However, since allegations of violations have been made, we request that you immediately investigate the alleged conditions and make any necessary corrections or modifications. Please advise me in writing, no later than <DATE> of the results of your investigation. You must provide supporting documentation of your findings, including any applicable measurements or monitoring results, and photographs which you believe would be helpful, as well as a description of any corrective action you have taken or are in the process of taking.

This letter is not a citation or a notification of proposed penalty which, according to the OSH Act may be issued only after an inspection of the workplace. It is our goal to assure that hazards are promptly identified and eliminated. Please take immediate corrective action where needed. We encourage employee participation in investigating and responding to any alleged hazard.

If we do not receive a response from you by indicating that appropriate action has been taken or that no hazard exists and why, a KY-OSH inspection will likely be conducted. An inspection may include a review of the following: injury and illness records, hazard communication, personal protective equipment, emergency action or response, bloodborne pathogens, confined space entry, lockout/tagout and related safety and health issues.

Please note, however, that KY-OSH selects for inspection some cases where we have received letters in which employers have indicated satisfactory corrective action. This is to ensure that employers have actually taken the action stated in their letters.

The State of Kentucky offers OSH consultation services without charge, to assist in resolving all occupational safety and health issues. However, the variety of services available or the scheduling of those services may be limited by the consultation project's requirement to give priority to small businesses in high hazard industries and by its backlog. To discuss or request the services call (502) 564-3070 and ask for the Division of Education and Training.

You are requested to post a copy of this letter where it will be readily accessible for review by all of your employees and return a copy of the signed Certificate of Posting (Attachment A) to this office. In addition, you are requested to provide a copy of this letter and your response to a representative of any recognized union or safety committee if these are at your facility. Failure to do so may result in an on-site inspection.

Kentucky OSH statutes (KRS 338.121) provide that "no person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint . . ." The Kentucky OSH Program investigates claims of discrimination and, if warranted, may issue a discrimination citation to an employer. Discrimination citations may require restoration of a discriminated employees job, earnings, and benefits..

If you have any question concerning this matter, please contact <CSHO name> at the address in the letterhead. Your personal support and interest in safety and health of your employees is appreciated..

Sincerely,

<CSHO NAME>

Attachment A for 1st EMPLOYER letter

CERTIFICATE OF POSTING OSHA NOTIFICATION OF ALLEGED HAZARD(S)

Complaint Nr: <complaint #>

Date of Posting: _____

Date Copy Given to an Employee Representative: _____

On behalf of the employer, I certify that a copy of the complaint letter received from the Kentucky Occupational Safety and Health Program has been posted in a conspicuous place, where all affected employees will have notice, or near such location where the alleged hazardous condition(s) occurred, and such notice has been given to each authorized representative of affected employees, if any. This notice was or will be posted for a minimum of ten (10) working days or until any hazardous conditions found are corrected.

_____ Signature

_____ Title

_____ Employer/Establishment name

Employees or Employee representatives having questions about the Kentucky Occupational Safety and Health complaint process may contact:

Kentucky Labor Cabinet
Division of Compliance
Occupational Safety and Health Program
1047 U.S. 127 So.
Suite 4
Frankfort, KY 40601
502-564-3070

2nd EMPLOYER Investigation Complaint Letter

Re:<Complaint #>

Dear:

On <DATE> this office sent to you a letter concerning alleged occupational safety and health hazards at your establishment. A copy of the letter is enclosed.

We have not received a reply from you concerning these allegations. Please advise this office of your findings and of any corrective action you have taken by<DATE>. If we do not hear from you, an inspection may be scheduled.

Kentucky Occupational Safety and Health Program selects for inspection a random sample of cases in which employers have indicated satisfactory corrective action. This policy has been established to ensure that employers have actually taken the action asserted in their letters.

If you have any questions concerning this matter, please contact at the above number. Your cooperation in this matter is appreciated.

Respectfully,

<Name and Signature of CSHO>

Enclosures

3rd EMPLOYER Investigation Complaint Letter

Re: <Name and Address of Company> <Complaint #>

Dear:

On <DATE> the KY-OSH Program notified you of alleged safety and/or health hazards at your worksite. Your response to these allegations was received in the Frankfort Office on <DATE>.

Based on our review of the information you provided in your response to these alleged hazards, we have determined that our file on this matter can be closed and no further action on this complaint is anticipated at this time.

Please note, however, that if the complainant disputes the accuracy of the response, it may be necessary for KY-OSH to contact you for additional information or documentation of corrective action in order to resolve these issues. In some situations, it may be necessary to conduct an inspection of your workplace.

We appreciate your prompt response to these allegations, and your interest in the safety and health of your employees. Please feel free to contact this office if we can be of additional assistance to you.

Sincerely,

<Name and signature of CSHO>

1st EMPLOYEE INVESTIGATION LETTER

October 29, 2001

<Name of Complainant>
Address
<City>, Kentucky <ZIP>

Dear <Name of Complainant>:

We have received your complaint alleging unsafe conditions at <Company Name> in <CITY>, Kentucky.

The Kentucky Occupational Safety and Health Statute provides that... "any employee or representative of employees, who believes that a violation of an occupational safety and health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for such notice and shall be signed by the employee or representative of employees".

An inspection will not be conducted since you are not an employee of <Employer Name>. However, we will conduct a non-formal investigation regarding your concerns.

During a non-formal investigation the KY-OSH Program will contact the employer by letter to notify him/her of the complaint and its allegation(s). The identity of the

complainant will be withheld from the employer in accordance with 803 KAR 2:090. The employer will be advised that he/she must investigate and determine whether the complaint is valid. The employer will be advised that a response is due within ten(10) working days and that KY-OSH requests the posting/sharing of information with employees, employee representative and/or the safety committee. Although the employer must respond within the above time frame, he/she may not be able to complete abatement action, but is encouraged to do so.

If a signed complaint by a current employee is received after the complaint investigation process has begun, KY-OSH shall make a determination as to whether the alleged hazard is still likely to exist based on the employer's response or by contacting the current employee wishing to file a signed complaint. If the alleged hazard is deemed likely to still exist then an inspection may be scheduled without further delay.

Your interest in workplace safety and health is appreciated.

Sincerely,

Program Manager

Closing Employee Inspection Complainant Letter

(Complainant Letter)

Date: January 30, 2002

:_

:_

:_

Dear: _

A representative of the Division of Occupational Safety and Health Compliance conducted an investigation at :_ as a result of your complaint received on :_. The investigator thoroughly checked all items listed in your complaint, and based upon evidence attained,

1. One or more citations were issued against the company.
(see enclosed copy)
2. We are not able to issue a citation relating to the items listed in the complaint, but one or more citations were issued where violations of occupational safety and health regulations were found. (see enclosure)
3. We are not able to issue a citation.

For your information, 803 Kentucky Administrative Regulation 2:090 Section 1(e) provides that any complaining party may, by submitting a written statement of position to the Labor Secretary, obtain review of those issues where a determination was made that a citation would not be issued.

Kentucky OSH statutes (KRS 338.121) provide that "no person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint" Please immediately advise us in writing if you are discriminated against or punished for your job-related safety and health activities. The Kentucky OSH Program will investigate your claim of discrimination and, if warranted, issue a discrimination citation against your employer which will require restoration of your job, earnings, and benefits.

Your interest in workplace health and safety is appreciated. If we can be of further assistance, please contact our office.

Sincerely,

Program Manager

APPENDIX B IMIS RECORDING

A. Instructions for recording complaint data.

1. On the OSHA-7, complete the data items as follows:
 - a. Item #37 - Mark "formal" for signed complaints and "nonformal" for all others.
 - b. Item 39 - Mark box d "nonformal complaint notification to employer."
 - c. Item 40 - "Date letter sent" - write the date the employer was called.
 - d. Item 41 - "Date response due" - write the date which is five working days later.
 - e. Item 42 - Where applicable the following codes will be entered:
ID (imminent danger), LP'S (local emphasis program),
NP (national emphasis program),
DI (disabling injury/illness),
SH (significant history),
IR (discrimination investigator request),
OD (OSHA disputes),
ED (employee disputes),
CC (companion complaint) or
SC (signed complaint).
 - f. Item 46 - "Optional Code" - write N-10-Phone.
2. For complaint inspections on the OSHA 1-B Worksheet, under item 13, REC (Related Event Code), mark the item with a "C" when the violation relates to the complaint.

B. Data Entry Options.

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CHAPTER IX

COMPLAINTS AND REFERRALS

A. Complaints.

1. General. The discussion of complaints in this chapter is confined to when a complaint is received and processed before an inspection rather than when it is given to the CSHO at the time the establishment is inspected.
 - a. Agency Response. The agency's response to a complaint will take a variety of forms, ranging from an inspection to a response by letter, depending upon the formality of the complaint, the nature of the hazard and the abatement response of the employer.
 - b. Complainant Identity. The identity of formal and nonformal complainants who wish to remain anonymous will be kept confidential, pursuant to KRS Chapter 338.121(1).
2. Definitions. The following definitions apply in this chapter:
 - a. Complaint. A complaint is a notice of a hazard or a violation of the Law believed to exist in a workplace given by an employee, a representative of employees, or any other source not listed in B.2.b. to the Secretary or his/her authorized representative.
 - (1) To constitute a complaint the notice must allege that a hazard exists in the workplace or that the law (meaning a standard or regulation) is violated.
 - (a) If the notice is so vague and unsubstantiated that the Program Manager is unable to make a reasonable judgment as to the existence of the alleged workplace hazard, there is no valid complaint. In such a case, however, every reasonable attempt shall be made to contact the person giving the notice to obtain more specific information.
 - (b) If, as a result of a recent inspection or on the basis of other objective evidence, the Program Manager determines that the hazard which is the subject of the notice is not present; e.g., it has already been corrected, such a notice is not a valid complaint.

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- (2) The workplace must be one wherein the KY-OSH Program's jurisdiction has not been preempted under KRS Chapter 338.021. Thus, if the notice involves conditions inside a mine, any hazard or violation clearly falls within an area wherein the KY-OSH Program's jurisdiction has been preempted. In such a circumstance the notice is not a complaint. Such notices shall be promptly transferred to the appropriate agency for its action.

b. Employee. For purposes of submitting a complaint, an employee is either of the following:

- (1) A present employee of the employer about whose establishment the complaint is being made.
- (2) A present employee of another employer if that employee is working at or near some other employer's workplace and is exposed to hazards of that workplace.

NOTE: Former employees are not considered employees for purposes of submitting a formal complaint. They can only submit nonformal complaints.

c. Representative of Employees. For purposes of submitting a complaint, a representative of employees is any of the following:

- (1) An authorized representative of the employee bargaining unit, such as a certified or recognized labor organization;
- (2) An attorney acting for an employee;
- (3) Any other person acting in a bona fide representative capacity; e.g., a member of the employee's family or an elected official. In this situation, a complainant purporting to act as a representative of an employee shall be presumed to be so acting unless the CSHO obtains information that the complaint was not submitted with the knowledge of or on behalf of the employee.

d. Formal Complaint. To meet the formality requirements outlined in KRS Chapter 338.121 (1) and in 803 KAR 2:090 a complaint shall:

- (1) Be reduced to writing either on a Notice of Alleged Safety or Health Hazards (KY-OSH-7 Form) or in a letter;

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- (2) Allege that an imminent danger or a violation threatening physical harm (i.e., a hazard covered by a standard or by the general duty clause) exists in the workplace;
 - (3) Set forth with reasonable particularity the grounds upon which it is based. This does not mean that the complaint must specify a particular standard; it need only specify a condition or practice that is hazardous and, if uncommon, why it is hazardous; and
 - (4) Be signed by at least one employee or employee representative.
 - (5) The following are examples of deficiencies which would result in the failure of an apparent formal complaint to meet the requirements of the definition:
 - (a) A thorough evaluation of the complaint does not establish reasonable grounds to believe that the alleged violation can be classified as an imminent danger or that the alleged hazard is covered by a standard or, in the case of an alleged serious condition, by the general duty clause (KRS Chapter 338.031 (1)(a)).
 - (b) The complaint concerns a workplace condition which has no direct relationship to safety or health and does not threaten physical harm; e.g., a violation of a recordkeeping or other regulation or a violation of a standard that is classified as de minimis.
 - (c) The complaint alleges a hazard which violates a standard but describes no actual workplace conditions and gives no particulars which would allow a proper evaluation of the hazard. In such a case the Program Manager shall make a reasonable attempt to obtain such information.
- e. Nonformal Complaint. Any complaint, such as the examples given under A.2.d.(5), which does not meet any or all of the formality requirements in A.2.d. is a nonformal complaint and is to be handled in accordance with the procedures in A.8.
- (1) Examples. Other examples of such complaints include the following:

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- (a) Oral complaints filed by employees.
 - (b) Unsigned written complaints filed by employees.
 - (c) Written and oral complaints filed by nonemployees (persons or groups other than current employees or their representatives).
 - (d) Complaints of hazards not covered by a standard or by the general duty clause.
 - (e) Complaints of violations of regulations (rather than standards).
 - (f) Complaints of violations of standards that are classified as de minimis.
- (2) Referrals from Other Agencies. Reports from sources listed in B.2.b, however, are referrals and are to be handled in accordance with the procedures in B.3.

3. Receiving Complaints. An incoming notice of hazards or alleged violations shall first be referred to a designated professional who shall obtain all available information from the person reporting it. The notice shall thereafter be forwarded to the supervisor to complete the evaluation.

- a. Employee Rights. When an oral notice is received from an employee or employee representative, that person shall be informed of the right to file a formal complaint in writing under KRS Chapter 338.121 and of the right, as a matter of law and the KY-OSH Program policy, to have the complainant's identity held confidential, if requested, regardless of the formality of the complaint.
- b. Workplace Inspections. The person giving notice shall be informed that formal complaints generally lead to workplace inspections while nonformal complaints usually result in letters requesting employers to undertake corrective action.
- c. Formalizing Oral Complaints. If the person is filing a notice orally and makes a request to formalize the complaint, the supervisor or designated professional, after confirming that the complainant is an employee or employee representative, shall complete the OSHA-7 Form to the extent possible prior to mailing for the complainant's signature.

- (1) If the signed complaint form is not returned

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within 10 working days, it shall be treated as a nonformal complaint; and a letter shall be sent to the employer. If, nevertheless, a signed complaint is received after 10 working days but before a letter has been sent to the employer, the complaint is to be considered formal and evaluated as such.

- (2) If a complainant filing orally declines to formalize his complaint, the supervisor or designated professional shall nevertheless attempt to obtain the complainant's name, address and telephone number.

d. Discrimination Complaint. The complainant shall be advised of the protection against discrimination afforded by KRS Chapter 338.121 (3) and shall be informed of the procedure for filing a discrimination complaint.

- (1) Safety and/or health complaints filed by former employees who allege that they were fired for exercising their rights under the Law are non-formal complaints and will not be scheduled for investigation.

- (a) Such complaints shall be recorded on a KY-OSH-7 Form and handled in accordance with the procedures outlined in Chapter X, C.1. They shall be transmitted to the appropriate Discrimination personnel for investigation of the alleged discrimination complaint.

4. Evaluating Complaints. A careful exercise of investigatory techniques is necessary for complete evaluation of complaints.

a. Classification. Immediately upon receipt of a notice reporting a hazard or an alleged violation, the supervisor shall decide if the notice meets the definition of a complaint. If so, the complaint shall be classified as formal or nonformal.

b. Documentation. The Program Manager shall evaluate all formal complaints as soon as they have been so classified, with all evaluation decisions fully documented in the establishment case file including all information obtained pursuant to the procedures outlined in this chapter. Complaints shall be classified as to their gravity in accordance with Chapter VI, B.8.

c. Both Safety and Health Hazards Alleged. When a

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complaint alleges both safety and health hazards, the complaint shall be referred to both safety and health Program Managers for evaluation. They shall coordinate the handling of the complaint. Supervisors shall maximize the use of cross-trained CSHOs to conduct complaint inspections involving both safety and health hazards.

- d. Response to Person Reporting. Whenever the Program Manager decides that a notice which fails to meet the definition of a complaint given in A.2.a. will not be responded to or that a complaint submitted by an employee or representative of employees which fails to meet all of the formality requirements given in A.2.d. will not be inspected, a letter shall be sent to the person submitting the notice (certified with return receipt) communicating that decision and the reasons for it.

- (1) The person shall be informed that he or she has a right to request further clarification of the decision from the Program Manager and, if still dissatisfied, the person may request that the Director investigate and determine if the Program manager's decision was made in accordance with current policy.
- (2) The complainant should be furnished with a copy of that procedure and assisted to such extent as may be reasonable.

NOTE: Procedures for informal review are specified at 803 KAR 2:090.

5. Information Needed for Complaint Evaluation. As stated in A.4, supervisory personnel shall evaluate complaints. The KY-OSH-7 Form shall normally be used to record both formal and nonformal complaints. Most complaints will be relatively unsophisticated and lacking in details. Thus, the complainant will normally have to be contacted, when possible, either for additional facts or to verify facts supplied. The evaluator must exercise professional judgment on the basis of the information available to decide whether or not there are reasonable grounds to believe that a violation exists and, if so, how it should be classified.

- a. Taking Complaints. When the Program Manager receives a complaint, by letter, in person or over the telephone, the KY-OSH-7 Form shall be completed. If the complainant wishes to submit a formal complaint, the person taking the complaint shall ask if the complainant is presently an employee or employee representative. If the complaint has been received in

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writing and has been signed, the complainant shall be contacted, if necessary, for response to questions on the KY-OSH-7 although the form need not be sent for signature.

- b. Additional Information. Additional information is usually needed to improve the quality of the complaints and to aid in determining their priority. Therefore, in completing item 8 on the KY-OSH-7 Form, an attempt shall be made to obtain detailed answers to the following questions:

(1) For All Complaints.

- (a) Describe the unsafe or unhealthful conditions; identify the location. What is the nature of the exposure?
- (b) What is the work being performed in the unsafe/unhealthful area? Identify, as well as possible, the type and condition of equipment in use, the materials (chemicals) being used, the process/operation involved, and the kinds of work being done near the hazardous area.
- (c) How often is work done at the task which leads to the exposure? For how long at one time? How long has the condition existed as far as can be determined? Has it been brought to the employer's attention? Have any attempts been made to correct the condition?
- (d) How many shifts are there? What time do they start? On which shift does the hazardous condition exist?
- (e) What personal protective equipment is required by the company? Is it used by employees? Include all PPE and describe it as specifically as possible. Include the manufacturer's name and any identifying numbers.
- (f) How many people work in the establishment? How many are exposed to the hazardous conditions? What is their proximity?
- (g) Is there an employee representative in the establishment? Include the name, address, and telephone number of the

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union and/or of the employee representative(s).

- (h) Identify the standard(s) apparently violated by the conditions described by the complainant.

(2) For Health Hazards.

- (a) Has the employer administered any tests to determine employee exposure levels to the hazardous conditions or substance? Describe these tests. What have been the results?
- (b) What engineering controls are in place in the area(s) in which the exposed employees work? For instance, are there any fans or acoustical insulation in the area which may reduce exposure to the hazard?
- (c) What administrative or work practice controls has the employer put into effect?
- (d) Do any employees have any symptoms which may have been caused by exposure to hazardous substances? Have any employees ever been treated by a doctor for a work-related disease or condition? What was it? Have there been any "near-miss" incidents?

(3) For Safety Hazards.

- (a) Under what adverse or hazardous conditions are employees required to work? (This should include conditions contributing to stress and "other" probability factors.)
- (b) Have any employees been injured as a result of this hazardous condition? Have there been any "near-miss" incidents?

6. Responding to Complaints Alleging Imminent Danger Conditions. Any complaint which, in the professional opinion of the Program Manager, constitutes an imminent danger, as defined in Chapter VII, shall be inspected irrespective of whether or not it meets the formality requirements of KRS Chapter 338.121 (1). It shall be inspected the same day received, where possible, but not later than the employer's next working day after receipt

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of the complaint.

7. Responding to Formal Complaints. All formal complaints meeting the requirements of KRS Chapter 338.121 and 803 KAR 2:090 shall be scheduled for workplace inspections.
 - a. Determination. Upon determination by the supervisor that a complaint is formal, an inspection shall be scheduled in accordance with the priorities in A.7.b.
 - b. Priorities for Responding by Inspections to Formal Complaints. Inspections resulting from formal complaints shall be conducted according to the following priority:
 - (1) Formal complaints, other than imminent danger, shall be given a priority based upon the classification and the gravity of the alleged hazards as defined in Chapters IV and VI.
 - (2) Formal serious complaints shall be investigated on a priority basis within 30 working days and formal other-than-serious complaints within 120 days.
8. Responding to Nonformal Complaints. All nonformal complaints shall receive a response. The procedures described below include responses to nonformal complaints designed to ensure correction of hazards identified in the complaint:
 - a. Responding by Letter to Nonformal Complaints. Upon receipt and evaluation of a nonformal complaint, the Program Manager, as soon as possible, shall prepare a letter to the employer advising him of the complaint, informing him of the standards allegedly violated (including copies of such standards) and outlining the means to assess the hazard and/or the corrective action required. The employer shall be asked to investigate the alleged conditions and respond to KY-OSH within a specified time. This letter shall be sent by certified mail with return receipt requested.
 - (1) Posting. The employer shall be requested to post copies of KY-OSH's letter of notification referred to in the previous subparagraph together with all subsequent correspondence dealing with the complaint items including the employer's response until such time as the case is closed. The employer shall be informed that a copy of the letter and subsequent correspondence will be sent to the complainant.
 - (2) Letter to Complainant. Concurrent with the

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letter to the employer, a letter to the complainant shall be prepared explaining that the employer has been informed of the complaint. It shall request the complainant to notify the Director if no corrective action has been taken or at least initiated within 30 calendar days (or less if so indicated in the letter to the employer) or if any adverse or discriminatory action or threats are made against the complainant. A copy of the letter to the employer shall be included with the letter to the complainant. Copies of all subsequent correspondence shall also be sent to the complainant.

- (3) Employer Response. If a response is received from the employer and it appears that appropriate corrective action has been taken or that no hazard is present, the case file shall be closed. The complainant shall be informed of all responses received from the employer.

- b. Responding by Inspection to Nonformal Complaints. Where the employer fails to respond or submits an inadequate response within the period specified in the letter or where the complainant informs KY-OSH that no corrective action has been taken or the action taken is inadequate, the Program manager shall contact the employer to determine what further action he/she plans to take. If no action has been taken and none is planned, the nonformal complaint shall be activated for inspection pursuant to the priorities in A.7.b.(2).

- (1) Status of Corrective Action. Where an ambiguity exists or where the employer has a correction plan which he has not yet had time to implement fully, the Program Manager shall communicate further, as appropriate, with the employer and/or the complainant to determine what interim protective steps have been taken until the corrective action shall have been completed and, later, whether the hazard has been adequately corrected. On the basis of information available, the Program Manager shall decide whether an inspection is warranted.

- (2) Tenth Letter Inspections. Where employers have sent satisfactory corrective action letters, the Program Manager shall, nevertheless, select every tenth letter for inspection to ensure that the employer's action corresponds to that asserted in the corrective action letter.

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- (a) Only satisfactory letters shall be included in this procedure. Letters shall be numbered in order of receipt by the Office.
 - (b) If for any reason the employer returning the tenth satisfactory letter cannot be inspected, the Program Manager shall select the next available satisfactory letter for inspection (e.g., the eleventh letter). The next "tenth letter" shall continue to be selected in the same way (i.e., the twentieth letter).
 - (c) Employers shall be informed at the time that the initial letter is sent out that they are subject to such "tenth letter" inspections.
- 9. Scope of Inspection. Complaint inspections shall include a complete investigation of the circumstances of the complaint. These investigations may be expanded at the discretion of the Program Manager when any of the conditions described in Chapter II, F.1.b. exists, but see Chapter III, D.1.d.(5)(b). Any departure from these guidelines shall be supported by adequate documentation.
- 10. Procedures. In general, the procedures in Chapter III shall be followed in conducting complaint inspections. Particular attention, however, is directed to the following special requirements for complaint investigations:
 - a. Copy of the Complaint. A copy of the complaint shall be given to the employer at the opening conference.
 - (1) In the case of a multi-employer worksite, such as a construction site, a copy of every complaint, including those against subcontractors, shall be provided to the general contractor as well as to the employer against whom the complaint has been filed.
 - (2) A copy of every complaint against the general contractor or against one or more of the subcontractors shall be provided, if possible, to each subcontractor whose employees may be exposed to the alleged hazard.
 - b. Identity of Complainant. KRS Chapter 338.121 (1) requires that, if the complainant so requests, names shall be deleted from the employer's copy of the complaint. If handwritten, the complaint shall be

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typed, and reworded if necessary, so that the identity of the complainant cannot be discerned by the employer. The Director may decide, as a matter of general policy, that names shall be deleted from all complaints unless the complainant explicitly requests that his or her name be revealed.

- c. Walkaround Rights. In a complaint inspection the walkaround rights of an employer and an employee representative shall be applicable in accordance with Chapter III. The employee representative will be chosen according to the procedures in Chapter III and, thus, the complainant will not necessarily be the employee representative for walkaround purposes.
- d. Results of Inspection to Complainant. After the completion of an inspection based on a formal or a nonformal complaint (except for a tenth letter inspection), the complainant shall be informed of the results as follows:
 - (1) Each complaint item shall be addressed with a reference to a citation item on an attached copy of the KY-OSH-2 issued as a result of the complaint inspection and/or with a sufficiently detailed description of the findings and why they did or did not result in a citation.
 - (2) Except for cases involving changes of penalty only, the complainant shall be informed of any subsequent modification of the citation due to an informal conference, a settlement agreement, or a decision of the Review Commission or a court, together with the reasons for the modification.
- e. Notification of Delays. If unusual delays are met in issuing a citation resulting from a complaint inspection, the complainant and, if appropriate, the employee representative shall be informed of such delays. A delay of more than 15 working days following the inspection would warrant such notification.
- f. Citation Not Warranted. If the Program Manager determines that a citation is not warranted, the complainant shall be informed in writing of such determination as outlined in A.10.d.(1).
 - (1) The complainant shall be told of his or her right to seek further clarification for the determination from the Secretary if any questions remain.

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- g. Communication to Complainant. Written communications to a complainant shall be sent to the employee's home address unless specific instructions have been given that such mail be sent to the place of employment.

B. Referrals.

1. General. As a rule, referrals will be handled in a manner similar to that of complaints.
2. Definitions. For purposes of this chapter, a referral is normally distinguished from a complaint by the source providing information on the alleged hazard.
 - a. Notices of hazards or alleged violations originated by the sources listed in b. of this section shall be considered as referrals except as noted in b.(3). All other notices of hazards shall be considered as complaints., including employee complaints transmitted to the agency by Federal OSHA. Formal and nonformal complaints received by other government agencies and simply forwarded to the KY-OSH Program for action are complaints since they do not originate with the agency or its employees. (See B.2.b.(4).)
 - b. Referrals may originate from the following sources:
 - (1) CSHO Referrals. Serious hazards shall normally be investigated by the CSHO who observes them (after consultation with the supervisor if required). On occasion, however, special expertise may be needed to assess the hazard. This may be obtained through the referral process.
 - (a) Types of Referrals. There are two types of CSHO referrals.
 - 1 Safety (Health to Safety or Safety to Safety).
 - 2 Health (Safety to Health or Health to Health).
 - (b) Subject of CSHO Referrals. Generally, CSHO referrals shall be limited to potentially serious hazards observed during an inspection or visible from or in public areas, such as streets, highways or the public areas of business premises. Such observed hazards shall be documented adequately for review by the supervisor.

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(c) Circumstances. There are circumstances when a CSHO referral may be necessary or appropriate, such as the following:

- 1 The CSHO lacks the necessary expertise.
- 2 The CSHO observing the hazard is already assigned to an inspection of higher priority.
- 3 The CSHO observes specific evidence of imminent danger or serious hazards at a worksite not programmed for an inspection.
- 4 Equipment necessary for an inspection is not available at the time.
- 5 Efficient utilization of resources requires that a referral be made; e.g., the size of the workplace, the number of employees involved, the length of time likely to be required for an inspection, the extent of hazards observed, etc.
- 6 The observations occur outside the CSHO's normal working hours.

NOTE: For inspection classification purposes, if a CSHO lacks the expertise to handle all complaint items or to complete an imminent danger or fatality/catastrophe investigation or for some other reason requires assistance from another CSHO, such assistance shall be counted as part of the original complaint, imminent danger or fatality/catastrophe and not as a referral. Such assistance shall not be counted as a separate inspection unless another discipline is involved (e.g., safety to health or health to safety).

(2) Reinspection Referrals. When a serious citation is withdrawn because of incomplete or erroneous inspection information, administrative error which cannot be corrected through an amendment to the citation or some other legitimate reason, the Program Manager, after consulting

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with the Director, shall handle the reinspection of such cases as CSHO referrals whenever there is reason to believe that the violative conditions continue to exist. (See Chapter II, F.1.c.(2)(e)) If a reinspection is not to be conducted, the reasons shall be documented in the case file.

- (3) Safety and Health Agency Referrals. This category includes referrals from NIOSH, Federal OSHA, consultation programs and discrimination investigators. Referrals from State or local Health Departments, medical doctors and safety and/or health professionals from other Agencies are also included in this category when they involve potentially serious employee exposures directly within the professional expertise of the person making the referral.

NOTE: For purposes of assigning an inspection priority, referrals from these sources will be considered as equivalent to CSHO referrals, although not counted as such by IMIS.

- (4) Discrimination Nonformal Complaint Referrals. The Director may decide to recommend certain safety and/or health complaints from former employees (discrimination complaints which also allege hazardous working conditions or violations of KY-OSH regulations) to the Program Manager for investigation under the procedures in A.3.d.

- (a) If originally received in the Office and referred to the discrimination personnel for handling of the discrimination complaint as outlined in Chapter X, C.1, such a complaint will already have been recorded on a KY-OSH-7 Form and classified as a nonformal complaint if it also included a notice which meets the definition of "complaint."
- (b) If the complaint was filed originally with discrimination personnel, it shall be recorded on a KY-OSH-7 Form and classified as a nonformal complaint.
- (c) When a nonformal complaint is received from the Discrimination Supervisory Investigator with a recommendation for inspection, it shall be scheduled for inspection and assigned a priority in

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accordance with A.7.b.(2).

- (5) Other Government Agency Referrals. Notifications of hazards observed and reported (referred) to the KY-OSH Program by other Federal, State or local government agencies or their employees; e.g., Federal Grain Inspection Service, Nuclear Regulatory Commission, local building inspectors, fire marshals, etc., are included in this category.

(a) Such notifications are referrals when nongovernment employees are exposed to the alleged hazards. (See, however, B.2.b.(3).)

(b) Reports by Federal employees, their supervisors, or their representatives of unsafe or unhealthful working conditions within their own workplaces and to which they are exposed (as provided for in Executive Order 12196) shall, of course, continue to be referred to the Federal Area Office.

- (6) Media Reports. Reports of accidents involving serious injury or of potentially serious workplace hazards in the media shall be considered as referrals. "Reports" shall be understood to include news items reported in the media as well as hazards reported directly to the Ky-OSH Program by media sources. Thus newspaper or magazine articles, photographs or news items reported over radio or television are examples of media reports as well as calls to the office by reporters.

- (7) Employer Reports. Employer reports of accidents, other than fatalities and catastrophes, or incidents, whether required by standard or regulation or not, shall be considered as referrals.

c. Referral inspections are unprogrammed inspections and, except for complaints received from discrimination personnel, shall be recorded using the KY-OSH-90 Form.

3. Procedures. Each referral shall be evaluated as thoroughly as possible in accordance with the guidelines for evaluating complaints given in A.4. and A.5, to determine whether there are reasonable grounds to believe that a safety or health hazard exists. If so, the hazard shall be classified as imminent danger, serious or other-than-serious. Referrals to be inspected shall be

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assigned a priority by the Program Manager according to the severity of the alleged hazard.

- a. When the CSHO observes an imminent danger situation under the circumstances outlined in B.2.b.(1)(c)3, the supervisor shall be contacted immediately, if practicable. Otherwise, an inspection shall be conducted without delay and the supervisor informed as soon as possible after the inspection has been initiated.
- b. If, after evaluation, the Program Manager determines that a CSHO referral or a referral from a safety and health agency should be classified as other-than-serious, such a referral shall be handled by letter in accordance with A.8.a.
- c. Other government agency referrals shall normally be handled by letter according to the instructions for nonformal complaints in A.8.a.
- d. For all referrals handled by letter, the following procedures apply:
 - (1) A letter shall be sent to the employer whenever a name and address is given in the referral or is obtainable with reasonable effort. Letters similar to those used for complaints shall be used for referrals also if the most appropriate one is revised in accordance with the particular circumstances of the referral.
 - (2) If no employer name or address is obtainable, the referring party shall be notified by telephone of this fact and shall be informed that the KY-OSH Program can take no action without being supplied with such information.
 - (3) When a letter is sent to the employer, the procedures in A.8. are applicable, except that no tenth letter inspections shall be scheduled.
- e. The Program Manager may decide that a government agency referral identifies a hazard of such a potentially serious nature that it warrants an inspection. Such referrals shall be placed in the same inspection priority as media reports.
- f. In the case of media reports, reasonable efforts to corroborate the information contained in the report shall be made whenever necessary. Specifically, the supervisor shall attempt, before scheduling an inspection, to determine if the incident is related to an apparent violation of a standard. This may be done

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by carefully reviewing the facts as reported by the media or, when indicated by the particular circumstances, by contacting a third party such as the police, the ambulance service or, in rare cases, by calling the employer.

- g. Media reports of other-than-serious hazards will not normally require an agency response.
- h. Reserved.
- i. Employer reports of incidents involving chemical spills or other releases to which employees may have been potentially exposed shall normally be scheduled for an inspection within 5 days if the potential exposure is determined to have been sufficiently serious to warrant an inspection. Otherwise such incidents shall be handled by letter.
- j. Except for discrimination referrals as noted in B.2.b.(3), referrals will not normally result in an inspection unless they involve potentially serious hazards. Consequently, referrals scheduled for inspection shall be investigated as soon as resources allow.
- k. Although no letter of acknowledgment of receipt will be necessary, a letter transmitting the results shall be sent to any referring safety and health agency or other government agency whenever a referral inspection is conducted.
- l. The scope of referral inspections shall include a complete investigation of the circumstances of the referral. These investigations may be expanded at the discretion of the Program Manager when any of the conditions described in Chapter II, F.1.b. exist, but see Chapter III.D.1.d.(5)(b).
- m. A case file shall be set up for each referral as it is received. This case file shall contain a copy of the completed KY-OSH-90 Form, all documentation supporting the evaluation and classification of the referral and subsequent action documents. If an inspection is eventually performed, all of the material will be absorbed into the inspection case file.